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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

REPORT OF THE SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Situation of human rights in the Republic of the Congo

Report by the Secretary-General

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Summary

This report is submitted to the Commission on Human Rights pursuant to resolution 1999/1 entitled "Situation of human rights in the Republic of the Congo", adopted on 20 August 1999 by the Sub-Commission on the Promotion and Protection of Human Rights.

The first section summarizes the main developments during the 1997-1999 period, describes the improvement in security conditions in the country and discusses the recent political opening-up process initiated by the Government.

Section II, after indicating the position as regards the ratification of international instruments by the Republic of the Congo, draws attention to the considerable delays in the submission of its reports to treaty bodies. The Committee on the Elimination of Racial Discrimination, during its consideration of the Congo's application of the Convention in March 1999, noted that it had failed to submit the initial report due in 1989 and made a number of observations on the human rights situation in the country. Moreover, the Human Rights Committee in November 1999 adopted a list of issues to be taken up in connection with the consideration of the second periodic report of the Republic of the Congo in March 2000.

In section III it is emphasized that no thematic Special Rapporteur or working group of the Commission on Human Rights had made a request to visit the country during the previous year. Moreover, it is noted that only the Special Rapporteur on the question of torture had transmitted allegations of human rights violations to the Congolese Government; reference is made to an extract of the Government's reply.

In section IV it is stated that the Office of the High Commissioner for Human Rights, pursuant to Congo's request for technical assistance, had undertaken a mission to evaluate human rights requirements in education. The programme that the Office of the High Commissioner intends to implement in the country is described.

Section V presents information provided by United Nations bodies concerning internally-displaced persons in the Congo, as well as refugees and persons who have been repatriated.

Lastly, section VI contains a summary of the information communicated by national and international NGOs on the main human rights violations in the Congo and on the situation of the judiciary.

Introduction

1. At its fifty-first session, the Sub-Commission on the Promotion and Protection of Human Rights on 20 August 1999 adopted by secret ballot, by 20 votes to 3 with 2 abstentions, resolution 1999/1, entitled "Situation of human rights in the Republic of the Congo". On 5 August the delegation of the Republic of the Congo exercised its right of reply and on 20 August 1999 made a statement before the vote.

2. In the preamble, the Sub-Commission began by recalling its resolution 1997/1 of 20 August 1997, in which it called upon the Government of the Republic of the Congo and all parties to the conflict to abide by their obligations under international human rights and humanitarian law. It went on to note with deep concern the persistence of allegations of deliberate massacres of civilians in the Pool region and in Brazzaville, allegations of arbitrary and extrajudicial executions whose perpetrators remained unpunished because of the de facto lack of independence of the judiciary, as well as allegations of deportations and arbitrary detentions and non-observance of the freedom of expression.

3. The Sub-Commission called upon the Government of the Republic of the Congo to ensure respect for human rights, to ratify the Convention against Torture, the Rome Statute of the International Criminal Court and the draft optional protocol to the African Charter on Human and People's rights establishing the African Court on Human and People's Rights. It also requested all parties to the conflict to respect their obligations under international humanitarian laws.

4. The Sub-Commission then requested the Secretary-General to submit a report on the situation of human rights in the Republic of the Congo to the Commission on Human Rights at its fifty-sixth session and to the Sub-Commission at its fifty-second session, and recommended that the Commission on Human Rights should consider the situation of human rights in the Republic of the Congo at its next session. Lastly, it decided, if the Commission was unable to do so, to continue consideration of the question at its fifty-second session.

5. The first section of this report summarizes the main developments that have occurred recently in the Republic of the Congo. Section II describes the activities of treaty bodies and section III discusses those of the special rapporteurs and working groups of the Commission on Human Rights. Section IV contains a description of the activities of the Office of the High Commissioner for Human Rights. Section V deals with the information received from United Nations bodies and section VI summarizes the information communicated to the Secretary-General by NGOs.

I. MAIN DEVELOPMENTS IN THE REPUBLIC OF THE CONGO

A. Background: the wars of 1997 and 1998

6. In June 1997, a few weeks before the presidential elections, latent violence increased and gradually plunged the country into civil war. Notwithstanding the establishment of an International Mediation Committee and the good offices missions of Mohamed Shanoun, Special

Representative of the Secretary-General in the Congo, President Pascal Lissouba and General Denis Sassou-Nguesso, it proved impossible to conclude a peace agreement at the Libreville Summit (14-15 September 1997) in which seven Heads of African States participated. On the contrary, fighting intensified and Mr. Sassou-Nguesso's militia (the Cobras) managed to seize control of the main strategic points in the country and in particular the economic capital, Pointe-Noire.

7. After four months of fighting, Mr. Sassou-Nguesso, who was Head of State from 1979 to 1992, proclaimed himself President in October and President Lissouba and Prime Minister Bernard Kolélas were forced to seek asylum abroad. It is difficult to arrive at accurate figures of the number of victims claimed by this war, but it is estimated that at least 8,000 persons were killed, 800,000 became internally displaced and about 50,000 sought refuge in the Democratic Republic of the Congo.

8. In the months that followed Mr. Sassou-Nguesso's accession as Head of State, a number of measures and initiatives were taken by the Government. Parliament was dissolved and replaced by a National Transition Council (CNT) and the Constitution was suspended and replaced by a Basic Act which established a highly centralized executive system of the presidential kind.

9. On the initiative of the President, a National Forum for Reconciliation, Unity, Democracy and Reconstruction (FNRUDR) was held from 5 to 14 January 1998; it was attended by 1,421 persons - most of them close to the seat of presidential power - who decided that general elections would be held following a flexible transition period of three years. Moreover, they stated that genocide had been committed by the previous regime in the course of the internal conflicts of 1993 and 1997.

10. The Law on the definition and repression of genocide, war crimes and crimes against humanity was adopted at the second regular session of the National Transition Council (2 July to 31 August 1998). Most of the crimes thus defined, which included summary executions, "disappearances" and cruel, inhuman or degrading treatment, are punishable by death. In October 1998, a court brought charges against almost 100 persons, including former President Lissouba, for crimes ranging from murder, torture, to theft. In November an international arrest warrant was issued against Mr. Lissouba by the Government.

11. Following a period of relative calm, clashes resumed in August 1998 between Mr. Kolélas's militias (the Ninjas) and those of Mr. Lissouba (the Cocoyes), on the one hand, and the Cobra militias and elements of the national police on the other. Initially limited to the Pool region, the fighting gradually spread and reached Brazzaville in December. The southern part of the capital, which was the scene of very heavy fighting, was bombarded intensively by the government forces supported by Angolese elements. According to reports, a very large number of persons, for the most part young men suspected of sympathizing or having contacts with the Ninjas, were arbitrarily executed, women raped and houses and shops pillaged and destroyed by elements of the loyalist forces and their allies. Moreover, almost 230,000 residents

of the capital, of whom 200,000 were from the southern districts of Bacongo, Makélékélé and Ngangalingo, were obliged to seek refuge in the northern part of the town, in the Pool region or in the Democratic Republic of the Congo.

12. Although government forces managed to resume control of the capital, relatively violent encounters were reported during the first few months of 1999, particularly in Bouenza. Towns such as Dolisie (80,000) and Nkayi (60,000) - the third and fourth largest in the country - were practically deserted and systematically pillaged. The four regions in the southern part of the country which were the most densely populated, namely, Pool, Bouenza, Lekoumou and Niari - were the ones most affected by this conflict.

B. The gradual improvement of security conditions

13. Although confrontations between loyalist forces and the armed militia of the opposition continued, their intensity declined in the second half of 1999. The improvement of security conditions in the country enabled United Nations bodies and international NGOs, which had been installed temporarily at Kinshasa, to return to Brazzaville in April 1999 and to resume their activities. Diplomatic missions also returned to the capital which is once again being served by the major airlines.

14. On 1 May 1999, President Sassou-Nguesso announced that, as a result of the improvement of security conditions, displaced persons could return to the capital and settle down once again in the southern districts of Brazzaville, namely, Bacongo and Makélékélé. During the weeks that followed, almost 200,000 persons returned to the capital, usually in difficult conditions.

15. The second Pan-African Music Festival (FESPAM) lasting one week was held under the auspices of UNESCO during August; tens of thousands of persons participated without any incident being reported.

16. At the beginning of October, in view of the considerable improvement in security conditions, the United Nations decided to reduce the security level at Brazzaville from IV to III, thereby enabling the bodies present to extend the scope of their operational activities.

C. The beginnings of a political opening-up process

17. Following the organization, in January 1998, of a National Forum for Reconciliation, Unity, Democracy and Reconstruction (FNRUDR) at Brazzaville, several dozen members of the military, including officers, who had served under the previous regime, as well as high-level personalities, returned to the Republic of the Congo.

18. On 15 August 1999, on the occasion of the national holiday, President Sassou-Nguesso, in his speech to the Congolese nation, said he was prepared to grant an amnesty to all members of the militia, including those who might be guilty of atrocities, who agreed to refrain from violence in future and to lay down their arms in order to promote the national reconciliation process. The President indicated that he was in favour of a dialogue with the main opponents at

present in exile. His speech constituted a decisive turning point insofar as, only a few weeks previously, the Government's official position was to reject any negotiations with political opponents responsible for past and present confrontations.

19. Following the amnesty of 15 August, almost 200 Ninja militiamen, who were close to the former President Pascal Lissouba and had taken refuge in the Democratic Republic of the Congo, gave themselves up to the authorities and were resettled in the "15 August Camp" for reintegration into the Congolese Armed Forces (FAC).

20. In October 1999 President Sassou-Nguesso decided on the electoral calendar, indicating that the constitutional referendum would be held in 2000 and presidential elections in 2001.

21. Lastly, on 16 November, after four days of discussion, a ceasefire agreement for the Republic of the Congo was signed at Pointe-Noire between the high commands of the forces of law and order, of the Ninjas, of the Mouvement national de libération du Congo-Renové (MNLC-R), of the Cobras, the Bana Dol, of the National Movement for the Liberation of the Congo (MNLC) and the Sud-Sud Resistance Movement. The agreement mentions an amnesty and calls for the reintegration of former militiamen who have laid down their arms into the FAC. Although exiled opposition figures had stated that they were not bound by the agreement, it constitutes a significant step forward along the path to national reconciliation and the consolidation of the security situation in the country.

II. TREATY MECHANISMS CONCERNING THE REPUBLIC OF THE CONGO

A. The ratification of international instruments by the Republic of the Congo

22. The Republic of the Congo is party to the following international instruments: the International Covenant on Economic, Social and Cultural Rights (1984), the International Covenant on Civil and Political Rights (1984), the International Convention on the Elimination of All Forms of Racial Discrimination (1988), the Convention on the Elimination of All Forms of Discrimination against Women (1982), the Convention on the Rights of the Child (1993), and the First Optional Protocol (1983) to the International Covenant on Civil and Political Rights.

23. It is not party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to the Convention on Migrant Workers or to the Second Optional Protocol to the International Covenant on Civil and Political Rights.

B. The ratification of regional instruments

24. The Republic of the Congo has been a party to the African Charter on Human and People's Rights since 1982 and to its protocol on the establishment of the African Court on Human and People's Rights since 1998. The Congo has also been a party to the OAU Convention governing the Specific Aspects of Refugee Problems in Africa since 1971.

C. The submission of reports to treaty-monitoring bodies

25. The Republic of the Congo is very much behind in the submission of its reports to the various committees set up under the conventions to which it is a party. The following are awaiting the submission of one or more reports: Committee on the Elimination of Discrimination against Women (four reports), the Committee on Economic, Social and Cultural Rights (two reports), the Committee on the Rights of the Child (one report) and the Committee on the Elimination of Racial Discrimination (five reports).

1. The Human Rights Committee

26. Pursuant to article 40 of the International Covenant on Civil and Political Rights, the Government of the Congolese Republic submitted its initial report (CCPR/C/36/Add.2) on 12 February 1986. The second periodic report (CCPR/C/63/Add.5) was transmitted on 9 July 1996. On 4 November 1999, the Human Rights Committee adopted a list of issues to be taken up in connection with the consideration of the second periodic report of the Republic of the Congo (CCPR/C/63/Add.5) at its sixty-eighth session in March 2000 (CCPR/C/68/L/COG).

2. Observations of the Committee on the Elimination of Racial Discrimination

27. Although the Republic of the Congo has not submitted a report to the Committee on the Elimination of Racial Discrimination, the question of the Congo was considered at the fifty-fourth session (1-19 March 1999). The Committee examined the application of the Convention by the Republic of the Congo on the basis of information emanating from the United Nations and other sources and adopted the following observations (A/54/18):

(a) It noted with regret that the initial report had been overdue since 10 August 1989 and that the State party had been unable to participate in the meeting and to furnish relevant information;

(b) It considered that the armed conflicts of 1997 had an important ethnic dimension and noted that members of pygmy groups continued to suffer from ethnic discrimination;

(c) It deplored the part played by mercenaries and the impunity that had been enjoyed by those responsible for the many violations of human rights and the displacement of populations.

28. In addition, the Committee:

(a) Requested the State party to investigate the violations of human rights, in particular acts of racial discrimination, to bring offenders to trial, to offer compensation to victims' families and to discontinue the employment of mercenaries;

(b) Requested the State party to provide it with information on the implementation of legislation prohibiting and sanctioning racial discrimination, on immigration, on the demographic composition of the population and on measures taken to ensure that perpetrators of acts of violence related to racial discrimination were not benefiting from impunity;

(c) Urged the State party to open a dialogue with the Committee as soon as possible;

(d) Suggested that the Government of the Congo, if it wished to do so, could avail itself of the technical assistance offered under the advisory services and technical assistance programme of the Office of the United Nations High Commissioner for Human Rights, with the aim of drawing up and submitting as soon as possible a report drafted in accordance with the reporting guidelines.

III. ACTIVITIES OF THE THEMATIC SPECIAL RAPPORTEURS AND WORKING GROUPS OF THE COMMISSION ON HUMAN RIGHTS

29. During the past year, no thematic special rapporteur or working group of the Commission on Human Rights asked to visit the Republic of the Congo. No urgent action has been taken or letter concerning allegations sent by the thematic special rapporteurs or working groups with the exception of one communication which was sent to the Congolese Government by the Special Rapporteur on the question of Torture.

30. In 1999 the Special Rapporteur received information concerning 7 allegations of rape and 15 allegations of torture, cruel, inhuman or degrading treatment said to have taken place between October 1997 and November 1998; according to this information, three of the persons in question died as a result of the ill-treatment to which they were subjected; these cases will be covered by his report (E/CN.4/2000/9). On 3 September 1999, the Special Rapporteur brought these new allegations to the attention of the Congolese Government. On 12 November 1999, the Permanent Mission of the Republic of the Congo to the Office of the United Nations at Geneva replied to the Special Rapporteur's letter in the following terms:

> "The Congolese Government does not recognize the acts with which it is reproached [...] Moreover, no litigant has yet brought these acts to the attention of the Congolese courts. Allegations that detained persons are beaten, tortured, raped, deprived of food or medical care or yet killed in places of detention are unfounded. Congolese security forces have not, at any time, committed human rights violations of this nature. These violations are the deeds of armed bandits who, taking advantage of the period of tension, troubles, insecurity and administrative paralysis experienced by my country during the war of 1997 and the armed attacks of the Ninja and Cocoye rebel militias during December 1998 and the beginning of this year, committed excesses of all kinds in the southern part of the country and particularly in Brazzaville, Pool and the Niari Valley. The acts perpetrated by these individuals in a crisis situation and in confused circumstances cannot therefore be attributed to the authorities. In any event, the Republic of the Congo has legislation that guarantees the protection of human rights. If the complainants mentioned in your letter consider that their rights and freedoms have really been violated, they can apply to the domestic courts. Articles 28 and 29 of the Basic Act state that any violation of a

fundamental right may be taken note of by a competent judicial body which will take the necessary steps to put an end to the injurious effects of the violation. The petitions of the complainants will be investigated impartially and the victims or their families will be entitled to fair and equitable compensation in accordance with the legislation in force (Basic Act, Penal Code of 1958, Code of Penal Procedure Act No. 1/63 of 13 January 1963)."

31. In the context of this correspondence (reproduced in extenso in the Special Rapporteur's report), the Permanent Representative states that "The Congolese Government recently embarked upon procedure with a view to its accession to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984."

IV. ACTIVITIES OF THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

32. At the beginning of 1998, the Congolese Government requested the Office of the High Commissioner for Human Rights for technical assistance in the field of human rights. The Office of the High Commissioner replied favourably and, in close cooperation with the local office of the United Nations Development Programme (UNDP) at Brazzaville, recruited an international consultant who was asked to take stock of the situation, evaluate needs and formulate proposals for action to be taken in respect of formal and non-formal human rights teaching. The mission took place from 16 to 22 November 1998 at Brazzaville.

33. In the course of this mission, the consultant talked with government education authorities, with representatives of United Nations bodies (UNDP, UNESCO, ILO, UNFPA, etc.), international NGOs and national NGOs active in promoting and protecting human rights, as well as teaching staff.

34. On conclusion of this mission, it was recommended that training seminars for primary and secondary schoolteachers should be organized in both the public and private formal education sectors, that human rights seminars should be arranged for the teachers, directors and pedagogical advisers of primary schools, that civics courses should be organized for teachers of history, geography, philosophy and French in secondary schools and colleges, and that it would be desirable to provide human rights training seminars for officials in the ministries of youth, education and the family. Lastly, it was suggested that documentation centres with reference material on the protection of women's rights should be created in schools.

35. In the informal education sector, priority should be accorded to the organization of training seminars for NGOs whose function was the promotion and protection of human rights, cultural associations and representatives of the media (the press and audio-visual).

36. The Office of the High Commissioner for Human Rights had, moreover, envisaged another evaluation mission in December 1998 to determine the human rights requirements of officials responsible for the maintenance of law and order. However, this mission was cancelled owing to the resumption of fighting.

37. In the context of the consolidated United Nations appeal for the Republic of the Congo for 2000, the Office of the High Commissioner for Human Rights has prepared a programme which, among other things, envisages the organization of training courses for NGOs on the observance of human rights, the planning and implementation of human rights teaching programmes at various school levels, evaluation of the training requirements of State officials responsible for the protection and promotion of human rights, the provision of human rights documentation to government authorities and NGOs, and the assumption of the cost of having seven NGO representatives participate in the international and regional courses organized by the International Centre on Human Rights and Peace Teaching (CIFEDHOP) at Geneva and at Bamako.

38. To this end, the Office of the High Commissioner would like to recruit - the financial situation permitting - a national human rights coordinator who, working in UNDP premises, would implement the above programmes and collect information on human rights violations for the thematic Special Rapporteurs and the working groups of the Commission on Human Rights.

V. INFORMATION FROM UNITED NATIONS BODIES

39. The situation of internally-displaced persons and refugees has been one of the major and most urgent problems confronting the Republic of the Congo since 1997. The Office for the Coordination of Humanitarian Affairs (OCHA), the United Nations Office of the High Commissioner for Refugees (UNHCR) and the office for the coordination of the humanitarian and operational activities of the United Nations system have regularly provided information on the situation of displaced persons, refugees and persons who have been repatriated. Owing to continuous population movements, the statistics presented below reflect the situation in mid-October 1999.

A. Internally-displaced persons and refugees

40. As a result of the wars of 1997 and 1998, almost 810,000 of the 2.9 million inhabitants became internally-displaced persons and were obliged to seek refuge in adjacent countries. Of the 230,000 who lived in the capital, mainly in the Makélékélé and Bacongo districts, tens of thousands sought refuge in the northern districts and in particular in Ouenzé and Moungali. However, most of them left in the direction of the Pool region.

41. On 1 May 1999 when security conditions had improved, President Sassou-Nguesso announced that displaced persons could return to Brazzaville and in particular to the southern parts of the town. As a result, almost 200,000 persons apparently returned to the capital. The population of Dolisie and Nkayi also returned. The state of health of these persons was dramatic in that almost 70 per cent were suffering from malnutrition. The condition of children under five years of age was even more critical for almost 30 per cent of them were experiencing severe malnutrition. The return of these people was allegedly accompanied by a large number of serious human rights violations, such as extrajudicial or summary executions and rape, and it is said that the few belongings they still possessed were pillaged systematically.

42. At the present time, about 580,000 Congolese are said to be internally displaced - mainly in the Pool (140,000), Bouenza (80,000), Niari (120,000) and Lékoumou (75,000) regions. It seems that there are some 90,000 displaced persons in Pointe-Noire (most of them from rural areas but also from Brazzaville) and 10,000 in the town of Nkayi. Conditions in the small rural towns are particularly precarious, by way of example, the town of Kinkala, 77 km to the south of Brazzaville, has been completely deserted by its 10,000 inhabitants.

43. According to UNHCR, almost 24,000 Congolese are still refugees in the Democratic Republic of the Congo and about 20,000 in Gabon. The Prime Minister of Gabon requested the international community to assist his country in dealing with this influx of refugees and UNHCR deployed additional staff to Tchibanga, in the south-western part of Gabon.

44. The Republic of the Congo is also host to refugees from the Cabinda enclave (21,000, of whom 6,000 are assisted by UNHCR) and Rwanda (7,000).

B. Repatriated persons

45. During the past year, about 40,000 Congolese are said to have returned to the Republic of the Congo, of whom almost 20,000 went back between April and July; the overwhelming majority of them were from the neighbouring Democratic Republic of the Congo. It appears that this repatriation process was to a very large extent facilitated by the signature, in April 1999, of a tripartite agreement between the Democratic Republic of the Congo, the Republic of the Congo and UNHCR.

VI. INFORMATION FROM NON-GOVERNMENTAL ORGANIZATIONS

46. This section contains a summary of the information communicated to the Secretary-General by various NGOs, namely, Amnesty International, Médecins sans frontières (MSF), the International Federation of Human Rights/International Federation of Human Rights Leagues (IFHR), the Observatoire congolais des droits de l'homme (OCDH), the Association d'aide et d'assistance aux mineurs et femmes incarcérés (AMFI) and the Collectif d'intellectuels congolais originaires de la région du Pool (CICOP). Most of the NGOs emphasize that the human rights situation in the Congo is extremely serious and calls for greater attention and action on the part of the international community and human rights defence mechanisms.

47. The main human rights violations brought to the attention of the NGOs are as follows: summary or extrajudicial executions; arbitrary arrest and detention; torture and rape; forced or involuntary disappearances; and violations of the freedom of expression, opinion and assembly. The NGOs emphasize that most of these violations are allegedly committed for political and/or ethnic reasons.

48. Information received by the secretariat reveals that most of the victims are allegedly unarmed civilians and particularly women and children, who were killed or wounded during confrontations between the two parties; this constitutes a serious violation of article 3 common

to the four Geneva Conventions. Representatives of associations for the promotion and protection of human rights, journalists and political opponents are said to be frequent victims.

49. These human rights violations are allegedly committed by all parties to the conflict and particularly by members of various armed militias. In most cases, the perpetrators of these acts are rarely identified individually.

50. The NGOs emphasize that those responsible for this series of serious human rights violations in the Congo have never been prosecuted or brought to justice following an inquiry ordered by the authorities. The judiciary is unable to perform its function for want of resources, moreover, it is subject to considerable pressure on the part of the authorities. The NGOs are in agreement that the security forces, and in particular the Cobra militias, enjoy extensive impunity, which constitutes one of the main obstacles to the national reconciliation process and the restoration of the rule of law.